

To: Ashley Boren [ABoren@suscon.org]; tacey Sullivan [SSullivan@suscon.org]; athy Viatella [KViatella@suscon.org]
Cc: []
Bcc: []
From: CN=Tim Vendlinski/OU=R9/O=USEPA/C=US
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ANPR

EPA California Watershed Push Unlikely To Replicate Chesapeake Bay Plan

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An EPA plan to take broad coordinating measures in a northern California watershed is unlikely to replicate controversial agency actions in the Chesapeake Bay, where EPA has set strict limits on nutrient pollution, due in part to budget and time constraints, sources involved in the effort say.

EPA officials have long touted the agency's Chesapeake Bay efforts as a possible roadmap for action in other watersheds nationwide. And the agency in its proposed fiscal year 2012 national program managers guide emphasizes taking a watershed approach to water quality issues by creating a single implementation plan for cleaning up multiple impaired waterbodies within a larger watershed -- an approach similar to what is happening in the Chesapeake Bay.

But despite initial concerns from industry sources, EPA's recent publication of an advance notice of proposed rulemaking (ANPR) for the San Francisco Bay /Sacramento-San Joaquin Delta Estuary (Bay Delta Estuary) in California is unlikely to lead to stringent nutrient controls there, EPA officials say. Instead, the agency is focusing on discovering what gaps there may be in state programs to protect fisheries, EPA says.

The ANPR, published in the Federal Register Feb. 22, asks the public to comment on "whether EPA should be taking new or different actions under its programs to address recent significant declines in multiple aquatic species in the Bay Delta Estuary," the ANPR says. The agency is considering a range of activities, "including enforcement, research, revisions to water quality standards, etc," the ANPR says.

The focus of the ANPR is largely a dramatic decline in fishery populations over the last five to 10 years, an EPA official notes. "What led us to this action was first the serious decline in the fisheries that we're seeing, and the re-engagement of the federal government to working more collaboratively with California, Karen Schwinn, who heads up the San Francisco Bay Program in EPA Region IX, told Inside EPA.

"California has a very aggressive water quality program, and they have a lot of activity underway," Schwinn notes. "What we're trying to do through this action is determine whether . . . stepping back . . . is everything getting addressed to the extent that it can be? Is there some regulatory action that the federal government should take? Or is there something that we should encourage the state to do differently?"

Industry sources had raised fears that EPA's watershed focus for the Bay Delta Estuary could be a first step towards a watershed-wide total maximum daily load (TMDL) for nutrients like the agency is establishing in the six-state Mid-Atlantic watershed.

But Schwinn and industry sources downplay the possibility of a nutrient TMDL for the watershed, with Schwinn noting that there are not the hypoxia issues in the Bay Delta Estuary as there are in the Chesapeake and some other waters.

Schwinn said EPA has never said it intends to set a nutrient TMDL for the Bay Delta Estuary. “I wouldn’t rule it out, but we don’t discuss it in the ANPR . . . If it is something that is brought up, we would certainly evaluate it . . . We will look at what’s gone on in the Chesapeake to see if there’s any lessons learned from there . . . but right now we’ve not determined to do that,” Schwinn said.

Currently the area does not have numeric nutrient standards, though the state is working on various numeric standards, including numeric standards for nutrients and pesticides, Schwinn said.

One industry source who has discussed the ANPR with Region IX officials agrees that a nutrient TMDL is unlikely. “I don’t think that this is going to result in a nutrient TMDL or even nutrient standard setting,” the source says. “I think they really don’t intend that,” in part due to “extremely limited resources right now” and a quick timeline for taking action, the source says. Comments on the ANPR are due April 25, and the agency hopes to sort and synthesize them over the course of just several months. Schwinn said the region will later this year issue “a second document that would form some findings or recommendations.”

“I actually for once in my life take EPA at face value on this,” the source says. The agency is “really . . . just looking for gaps. . . . They are very aware that there’s a lot going on. There are things that our state is perhaps better equipped to deal with than they are,” such as water diversion and water rights issues, which are key in this watershed, the source says. “I think they really are just trying to see what the state of the science is.”

Some publicly owned treatment works (POTWs) that plan to submit comments will likely focus on as-yet unimplemented portions of the California toxics rule relating to selenium, the source says.

POTWs in comments will also focus on EPA efforts to deal with pesticides at the registration point, rather than by developing stringent criteria that would require the wastewater industry to remove pesticide residues from water.

EPA Harmonizing Methods

EPA’s Office of Water and Office of Pesticide Programs have been working towards harmonizing methods they use to address pesticides’ water quality risk between the Clean Water Act (CWA) and Federal Insecticide, Fungicide & Rodenticide Act (FIFRA), which could result in more stringent labeling requirements, so that requirements for pesticide use meet the stringent water quality standards that wastewater treatment plants have to meet when disinfecting water.

Many pesticides are only regulated under FIFRA, instead of also having CWA controls, because the robust data needed for water act limits is lacking, sources say. Environmentalists argue that the values used in pesticide registrations are less protective than those for water act regulation. Under the CWA, discharges must not harm species most sensitive to a particular contaminant, but under FIFRA, there are no mandates to choose a particular species on which to test toxicity.

Another concern of POTWs is with contaminants of emerging concern, such as pharmaceuticals and personal care products. They plan to encourage EPA to focus on that, and “help us work on the science end of it,” the source says.

“I think one of the things that we’re really going to stress is . . . EPA’s good at contaminant regulation, and they’re good at all things water quality . . . but to really help them understand that the Delta interactions and stressors are so complex that you can’t look at this through a water quality lens,” the source says. “If we just fix . . . [discharges] then that is not going to restore the Delta.” -- Erica Martinson